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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/743,758	01/16/2001	Ralf Schweinfurth	MERCK 2192	7747
23599	7590	03/08/2006	EXAMINER	
MILLEN, WHITE, ZELANO & BRANIGAN, P.C. 2200 CLARENDON BLVD. SUITE 1400 ARLINGTON, VA 22201			BHAT, NINA NMN	
			ART UNIT	PAPER NUMBER
			1764	

DATE MAILED: 03/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/743,758

Applicant(s)

SCHWEINFURTH ET AL.

Examiner

N. Bhat

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 and 12-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 12-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                                                   |                                                                                         |
|-----------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                                                  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                              | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

### DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 5-23-2005 has been entered.

2. The examiner acknowledges that an improper restriction requirement was sent out regarding this case. The restriction requirement was sent out in error and doesn't pertain to this case. The examiner acknowledges that this is a 371 National stage application. Claims 1-37 are pending. Action on the merits of claims 1-37 follows:

3. Applicant's Information disclosure statement of May 23, 2005 has been fully and carefully considered.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-2 and 4-7, 9-10, 20-21, 23-26 and 28-29 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 9856261.

WO 9856261 teaches a feed pellets or a fish feed having a coating of titanium dioxide on a mica and teaches that the fish feed has a pearlescent color.[Note

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Page 21-23, [lines 4-15]. The mica is a platy substrate. The amounts of titanium dioxide is between 0.3-0.5% which is within the range as claimed by applicant. WO 9856261 specifically teach on Pages 22-23, that principal constituents of mica-titanium dioxide are oxides and hydroxyls of aluminum, potassium, silicon and titanium and further teach that the coating can include other pigments and specifically teach that pearlescent pigments can be colored to combine reflectance with color and can be used to increase the visibility of the feed particles.

6. Claims 1-10 and 20-26 and 28-29 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 99615629 or EP 960911.

WO 996115629 or EP 960911 both separately teach platy substrates which include silicon dioxide flakes or mica coated with titanium dioxide or iron oxide, the platy coated substrate are used for coloring of both foods and pharmaceuticals, the amount of titanium dioxide or iron oxide are in the amounts between 0.1 and 5 wt%. [Note Page 4, lines 1-2 and 9-16 and the claims.]

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

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2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 12-19 and 30-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 99615629 further in view of the Candurin product brochures.

WO 99615629 discloses the invention substantially as claimed for reasons delineated above.

However, WO 99615629 does not teach using both titanium dioxide pigments and iron oxide pigments coated on a platy substrate in a food or pharmaceutical.

The Candurin product brochures teach that iron oxide pigments in combination with titanium dioxide pigments on mica is known and is a recognized pigment composition for coloring foods or pharmaceuticals. The Candurin product brochures teach that the pigments can be orally ingestible.

It would have been obvious from the teachings of WO 99615629 who teaches a food or pharmaceutical product comprising a pearlescent or interference titanium dioxide pigments and/or iron oxide pigments each comprising a platy substrate coated with at least one layer of titanium dioxide or iron oxide, to use both pigments is taught in the Candurin Brochures, to use the iron oxide pigments and titanium dioxide pigments in a food or pharmaceutical in proportions which provides best results has been suggested by the WO 99615629 patent thus rendering applicant's claims as a whole obvious to one having ordinary skill in the art at the time the invention was made.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to N. Bhat whose telephone number is 571-272-1397. The examiner can normally be reached on Monday-Friday, 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Caldarola can be reached on 571-272-1444. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



N. Bhat  
Primary Examiner  
Art Unit 1764